

Testimony of Julian Whitaker, MD

FDA Hearings

April 3, 2000

Ladies and gentlemen, truthful, nonmisleading information has not been on nutritional supplements for more than 25 years. 07721-00 APR-8 P3:18

For instance, on bottles of vitamin C, the labels should tell you that this vitamin may be helpful in the prevention of cancer and heart disease. On bottles of vitamin E, it should say on that supplements of vitamin E may be helpful, along with diet and exercise, in preventing cardiovascular disease. On bottles of B-complex vitamins, it should be state that these nutrients may be helpful in preventing heart disease, several types of cancer, and neural tube birth defects. These are truthful, non misleading claims that are substantiated by a wealth of scientific data.

You haven't seen such information on supplement labels because the FDA has not allowed it. However, the court has ruled that the FDA's censorship of this kind of information on nutritional supplement bottles is illegal and unconstitutional. That ruling by the Third Circuit Court of Appeals was handed down in January 1999. The court ruled that the barriers the FDA puts up against supplement manufacturers and retailers that they meet its standard of significant scientific agreement was arbitrary, capricious, and illegal in that it violated the Administrative Procedure Act. The court also held that its prior restraint of speech, forbidding manufacturers and retailers from saying anything good about a nutritional supplement until the FDA approves such, was a violation of Article One of the Constitution guaranteeing free speech.

The FDA appealed these rulings, which virtually unraveled their 25-year censorship program designed specifically for the nutritional supplement industry, to a Circuit Court. The judges voted as a block 13 to 0 against the FDA. The FDA did not appeal this decision to the Supreme Court, probably because the government didn't want to pay for yet another losing battle, and that option is no longer available.

So what has the FDA done to correct its illegal and unconstitutional rulings and to abide by the court order?

Absolutely nothing but delays, procrastination, excuses, foot dragging, and other governmental nonsense.

Ladies and gentlemen, if this court order had been to correct a civil right suffered by an ethnic group, if this court order had been to preserve freedom of the press, if this court order had been to end discrimination based on gender, neither the public nor the courts would have allowed a government bureaucracy to play twiddlee-dee-dee for over a year.

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In fact, this hearing is a fraudulent sham. The court ruling did not provide an incentive for the FDA to have a hearing for input as to how they should abide by a court ruling.

Ladies and gentlemen, the FDA's illegal and unconstitutional censorship of truthful, nonmisleading labels on nutritional supplements has been dealt a fatal blow, and I am proud to be a part of those who orchestrated such. Like a female lion on a hunt, we have this illegal repression of speech by the throat. If it has not been swept from our political landscape within the next year, then you had best worry, because that will mean our system of checks and balances to guarantee freedom in this country have failed.